



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 229**

**RIN 0648–XG334**

**Pacific Island Pelagic Fisheries; False Killer Whale Take Reduction Plan; Closure of Southern Exclusion Zone**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; area closure; request for comments.

**SUMMARY:** NMFS is closing the Southern Exclusion Zone (SEZ) to deep-set longline fishing through December 31, 2018, for all vessels registered under the Hawaii longline limited access program, as a result of the fishery reaching the established annual trigger of two observed false killer whale mortalities or serious injuries (M&SI) in the fishery within the U.S. Exclusive Economic Zone (EEZ) around Hawaii. This action is necessary to comply with False Killer Whale Take Reduction Plan (Plan) regulations that establish the SEZ closure trigger and procedures to limit M&SI of false killer whales in the Hawaii deep-set longline fishery.

**DATES:** Effective July 24, 2018, through December 31, 2018.

NMFS must receive comments by August 17, 2018.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NMFS–2018–0085, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#/docketDetail;D=NOAA–NMFS–2018-](https://www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2018-0085)

0085. Click the “Comment Now” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), attention Kevin Brindock, Protected Resources, 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

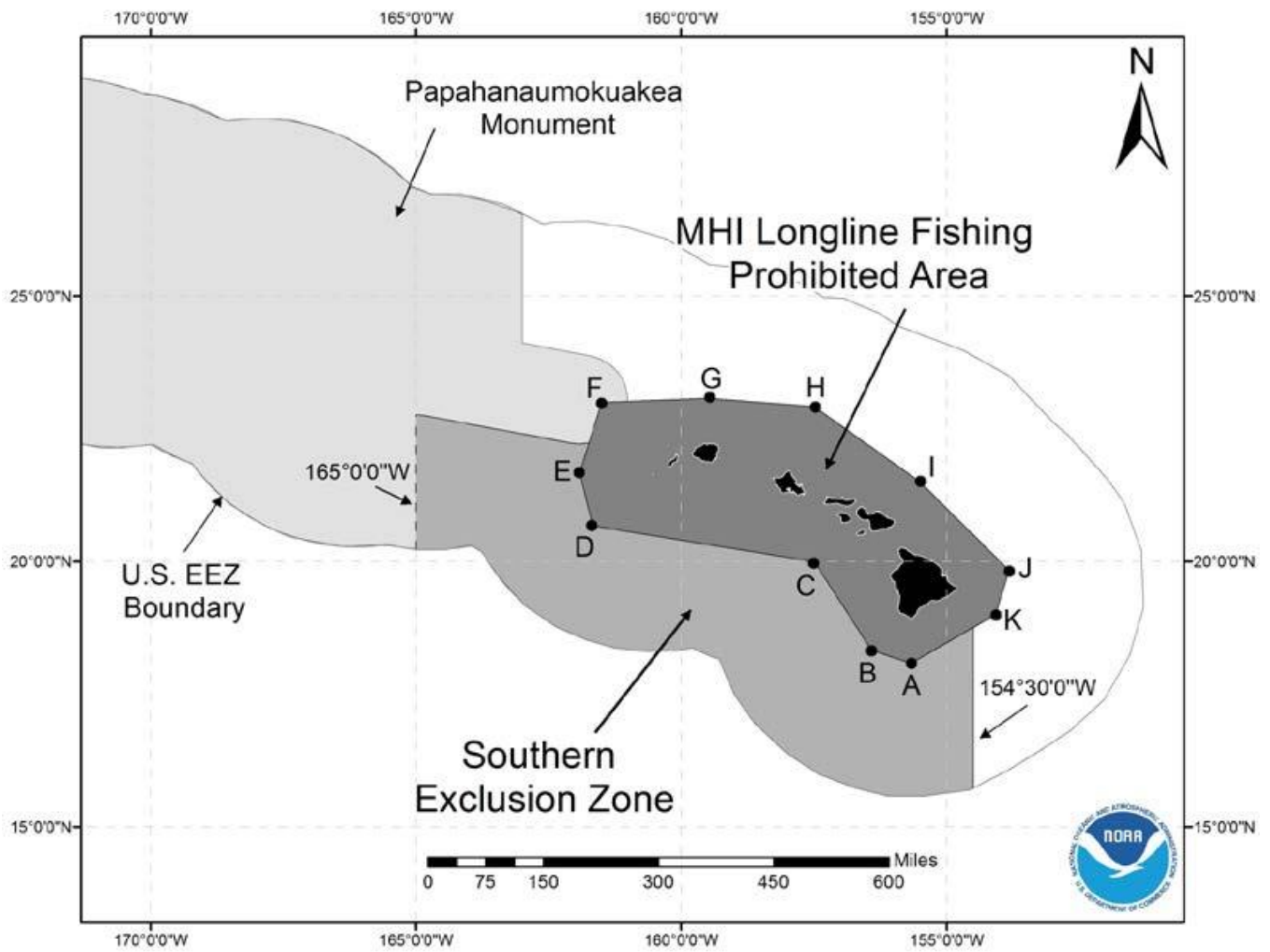
*Instructions:* NMFS may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Kevin Brindock, Protected Resources, NMFS Pacific Islands Regional Office, 808-725-5146, [kevin.brindock@noaa.gov](mailto:kevin.brindock@noaa.gov); or Kristy Long, NMFS Office of Protected Resources, 301-526-4792, [kristy.long@noaa.gov](mailto:kristy.long@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The False Killer Whale Take Reduction Plan (Plan) was implemented on December 31, 2012, pursuant to section 118(f) of the Marine Mammal Protection Act (MMPA) to reduce the level of incidental M&SI of the Hawaii pelagic and Hawaii insular stocks of false killer whales in the Hawaii longline fisheries (77 FR 71260; November 29, 2012). The Plan, based on consensus recommendations from the False Killer Whale Take Reduction Team, included the creation of an SEZ that would be closed to deep-set longline fishing if a certain number (trigger) of false killer whale M&SI are observed in the deep-set fishery in the EEZ. As described in the Plan regulations (50 CFR 229.37(d)(2)), the SEZ

is bounded on the east at 154° 30' W. longitude, on the west at 165° W. longitude, on the north by the boundaries of the Main Hawaiian Islands Longline Fishing Prohibited Area and Papahānaumokuākea Marine National Monument, and on the south by the EEZ boundary (see Fig. 1). The trigger for closing the SEZ is two observed false killer whale M&SI in the deep-set longline fishery.

Figure 1. Southern Exclusion Zone.



NMFS-certified fishery observers documented a total of four false killer whales hooked and released injured during deep-set trips in the U.S. EEZ, one each on February 8, May 23, May 24, and June 3, 2018. NMFS followed the procedures outlined in the final rule and criteria in the NMFS process for distinguishing serious from non-serious injuries of marine mammals (NMFS Policy Directive PD 02-238 and NMFS Instruction 02-238-01) to evaluate these injuries, and determined that all four were serious injuries. Therefore, NMFS has determined that the SEZ trigger (i.e., two M&SI) has been met, and closing the SEZ to deep-set longline fishing is required to comply with the Plan.

In accordance with 50 CFR 229.37(e)(6), NMFS must publish notification that the SEZ will be closed to deep-set longline fishing beginning at a specified date, which is not earlier than 7 days and not later than 15 days after the date of filing the closure notice for public inspection at the Office of the Federal Register, until the end of the fishing year in which the trigger is reached. During the closure, it is prohibited to fish using deep-set longline gear in the SEZ.

This document serves as advance notification to fishermen, the fishing industry, and the general public that the SEZ will be closed to deep-set longline fishing from July 24, 2018, through December 31, 2018.

NMFS will consider public comments on this temporary rule. NMFS must receive comments by the date provided in the **DATES** section, not postmarked or otherwise transmitted by this date.

## **Classification**

There is good cause to waive prior notice and an opportunity for public comment on this action pursuant to 5 U.S.C. 553(b)(B). Providing an opportunity for prior notice and comment would be contrary to the public interest because the SEZ closure has been triggered by a second

observed serious injury and mortality, and immediate closure of the SEZ is necessary for the remainder of 2018 to prevent additional mortalities or serious injuries, which may have unsustainable impacts on the Hawaii pelagic stock of the false killer whale. Furthermore, prior notice and comment is unnecessary because the take reduction plan final rule (77 FR 71259, November 29, 2012) that implements the procedure for closing the SEZ (codified at 50 CFR 229.37(d)(2) and (e)) has already been subject to an extensive public process, including the opportunity for prior notice and comment. All that remains is to notify the public of the second observed mortality and serious injury of a pelagic false killer whale resulting from commercial longline operations, and the longline closure of the SEZ for the remainder of the 2018 fishing year. Although this action is being implemented without the opportunity for prior notice and comment, NMFS is soliciting and will respond to public comments from those affected by or otherwise interested in this rule.

The NOAA Assistant Administrator for Fisheries (AA) also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3). Failing to waive the 30-day delay in effectiveness would likely result in additional interactions and possible mortality and serious injuries to the Hawaii pelagic false killer whale stock. Under the MMPA, NMFS must reduce mortality and serious injury of marine mammal stocks protected by a take reduction plan regulations. This includes taking action to close the SEZ immediately upon a second observed mortality and serious injury resulting from commercial longlining in the EEZ. Accordingly, the SEZ closure must be implemented immediately to ensure compliance with the provisions of the MMPA and the take reduction plan regulations. Nevertheless, NMFS recognizes the need for fishermen to have time to haul their gear and relocate to areas outside of

the SEZ; thus, NMFS makes this action effective 7 days after filing this document in the **Federal Register**.

This action is required by 50 CFR 229.37(e)(3), and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1361 *et seq.*

Dated: July 13, 2018.

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Samuel D. Rauch, III,  
Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

[FR Doc. 2018-15332 Filed: 7/17/2018 8:45 am; Publication Date: 7/18/2018]